



General Assembly

Amendment

February Session, 2014

LCO No. **4464**

HB0550004464HD0

Offered by:

REP. ABERCROMBIE, 83rd Dist.

SEN. SLOSSBERG, 14th Dist.

To: Subst. House Bill No. **5500**

File No. 674

Cal. No. 217

"AN ACT CONCERNING PROVIDER AUDITS UNDER THE MEDICAID PROGRAM."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (d) of section 17b-99 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2014*):

6 (d) The Commissioner of Social Services, or any entity with which
7 the commissioner contracts, for the purpose of conducting an audit of
8 a service provider that participates as a provider of services in a
9 program operated or administered by the department pursuant to this
10 chapter or chapter 319t, 319v, 319y or 319ff, except a service provider
11 for which rates are established pursuant to section 17b-340, shall
12 conduct any such audit in accordance with the provisions of this
13 subsection. For purposes of this subsection "extrapolation" means the
14 determination of an unknown value by projecting the results of the

15 review of a sample to the universe from which the sample was drawn;
16 "provider" means a person, public agency, private agency or
17 proprietary agency that is licensed, certified or otherwise approved by
18 the commissioner to supply services authorized by the programs set
19 forth in said chapters; and "universe" means a defined population of
20 claims submitted by a provider during a specific time period.

21 (1) Not less than thirty days prior to the commencement of any such
22 audit, the commissioner, or any entity with which the commissioner
23 contracts to conduct an audit of a participating provider, shall provide
24 written notification of the audit to such provider, unless the
25 commissioner, or any entity with which the commissioner contracts to
26 conduct an audit of a participating provider makes a good faith
27 determination that (A) the health or safety of a recipient of services is
28 at risk; or (B) the provider is engaging in vendor fraud. A copy of the
29 regulations established pursuant to subdivision (11) of this subsection
30 shall be appended to such notification.

31 (2) Any clerical error, including, but not limited to, recordkeeping,
32 typographical, scrivener's or computer error, discovered in a record or
33 document produced for any such audit shall not of itself constitute a
34 wilful violation of program rules unless proof of intent to commit
35 fraud or otherwise violate program rules is established. In determining
36 which providers shall be subject to audits, the Commissioner of Social
37 Services may give consideration to the history of a provider's
38 compliance in addition to other criteria used to select a provider for an
39 audit.

40 (3) A finding of overpayment or underpayment to a provider in a
41 program operated or administered by the department pursuant to this
42 chapter or chapter 319t, 319v, 319y or 319ff, except a provider for
43 which rates are established pursuant to section 17b-340, shall not be
44 based on [extrapolated projections] extrapolation unless (A) there is a
45 determination of sustained or high level of payment error involving
46 the provider, (B) documented educational intervention has failed to

47 correct the level of payment error, or (C) the value of the claims in
48 aggregate exceeds [one hundred fifty] two hundred thousand dollars
49 on an annual basis.

50 (4) A provider, in complying with the requirements of any such
51 audit, shall be allowed not less than thirty days to provide
52 documentation in connection with any discrepancy discovered and
53 brought to the attention of such provider in the course of any such
54 audit.

55 (5) The commissioner, or any entity with which the commissioner
56 contracts, for the purpose of conducting an audit of a provider of any
57 of the programs operated or administered by the department pursuant
58 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service
59 provider for which rates are established pursuant to section 17b-340,
60 shall produce a preliminary written report concerning any audit
61 conducted pursuant to this subsection, and such preliminary report
62 shall be provided to the provider that was the subject of the audit not
63 later than sixty days after the conclusion of such audit.

64 (6) The commissioner, or any entity with which the commissioner
65 contracts, for the purpose of conducting an audit of a provider of any
66 of the programs operated or administered by the department pursuant
67 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service
68 provider for which rates are established pursuant to section 17b-340,
69 shall, following the issuance of the preliminary report pursuant to
70 subdivision (5) of this subsection, hold an exit conference with any
71 provider that was the subject of any audit pursuant to this subsection
72 for the purpose of discussing the preliminary report. Such provider
73 may present evidence at such exit conference refuting findings in the
74 preliminary report.

75 (7) The commissioner, or any entity with which the commissioner
76 contracts, for the purpose of conducting an audit of a service provider,
77 shall produce a final written report concerning any audit conducted
78 pursuant to this subsection. Such final written report shall be provided

79 to the provider that was the subject of the audit not later than sixty
80 days after the date of the exit conference conducted pursuant to
81 subdivision (6) of this subsection, unless the commissioner, or any
82 entity with which the commissioner contracts, for the purpose of
83 conducting an audit of a service provider, agrees to a later date or
84 there are other referrals or investigations pending concerning the
85 provider.

86 (8) Any provider aggrieved by a decision contained in a final
87 written report issued pursuant to subdivision (7) of this subsection
88 may, not later than thirty days after the receipt of the final report,
89 request, in writing, a review on all items of aggrievement. Such request
90 shall contain a detailed written description of each specific item of
91 aggrievement. The designee of the commissioner who presides over
92 the review shall be impartial and shall not be an employee of the
93 Department of Social Services Office of Quality Assurance or an
94 employee of an entity with which the commissioner contracts for the
95 purpose of conducting an audit of a service provider. Following
96 review on all items of aggrievement, the designee of the commissioner
97 who presides over the review shall issue a final decision.

98 (9) A provider may appeal a final decision issued pursuant to
99 subdivision (8) of this subsection to the Superior Court in accordance
100 with the provisions of chapter 54.

101 (10) The provisions of this subsection shall not apply to any audit
102 conducted by the Medicaid Fraud Control Unit established within the
103 Office of the Chief State's Attorney.

104 (11) The commissioner shall adopt regulations, in accordance with
105 the provisions of chapter 54, to carry out the provisions of this
106 subsection and to ensure the fairness of the audit process, including,
107 but not limited to, the sampling methodologies associated with the
108 process. The commissioner shall provide free training to providers on
109 how to enter claims to avoid clerical errors and shall post information
110 on the department's Internet web site concerning the auditing process

111 and methods to avoid clerical errors. Not later than February 1, 2015,
112 the commissioner shall establish and publish on the department's
113 Internet web site audit protocols to assist the Medicaid provider
114 community in developing programs to improve compliance with
115 Medicaid requirements under state and federal laws and regulations,
116 provided audit protocols may not be relied upon to create a
117 substantive or procedural right or benefit enforceable at law or in
118 equity by any person, including a corporation. The commissioner shall
119 establish audit protocols for specific providers or categories of service,
120 including, but not limited to: (A) Licensed home health agencies, (B)
121 drug and alcohol treatment centers, (C) durable medical equipment,
122 (D) hospital outpatient services, (E) physician and nursing services, (F)
123 dental services, (G) behavioral health services, (H) pharmaceutical
124 services, and (I) emergency and nonemergency medical transportation
125 services. The commissioner shall ensure that the Department of Social
126 Services, or any entity with which the commissioner contracts to
127 conduct an audit pursuant to this subsection, has on staff or consults
128 with, as needed, a medical or dental professional who is experienced in
129 the treatment, billing and coding procedures used by the provider
130 being audited.

131 Sec. 2. Section 17b-99a of the 2014 supplement to the general statutes
132 is repealed and the following is substituted in lieu thereof (*Effective July*
133 *1, 2014*):

134 (a) (1) For purposes of this section, (A) "extrapolation" means the
135 determination of an unknown value by projecting the results of the
136 review of a sample to the universe from which the sample was drawn,
137 (B) "facility" means any facility described in this subsection and for
138 which rates are established pursuant to section 17b-340, and (C)
139 "universe" means a defined population of claims submitted by a
140 facility during a specific time period.

141 (2) The Commissioner of Social Services shall conduct any audit of a
142 licensed chronic and convalescent nursing home, chronic disease

143 hospital associated with a chronic and convalescent nursing home, a
144 rest home with nursing supervision, a licensed residential care home,
145 as defined in section 19a-490, and a residential facility for persons with
146 intellectual disability which is licensed pursuant to section 17a-227 and
147 certified to participate in the [Title XIX] Medicaid program as an
148 intermediate care facility for individuals with intellectual disabilities in
149 accordance with the provisions of this section.

150 (b) Not less than thirty days prior to the commencement of any such
151 audit, the commissioner shall provide written notification of the audit
152 to such facility, unless the commissioner makes a good-faith
153 determination that (1) the health or safety of a recipient of services is at
154 risk; or (2) the facility is engaging in vendor fraud under sections 53a-
155 290 to 53a-296, inclusive.

156 (c) Any clerical error, including, but not limited to, recordkeeping,
157 typographical, scrivener's or computer error, discovered in a record or
158 document produced for any such audit, shall not of itself constitute a
159 wilful violation of the rules of a medical assistance program
160 administered by the Department of Social Services unless proof of
161 intent to commit fraud or otherwise violate program rules is
162 established. In determining which facilities shall be subject to audits,
163 the Commissioner of Social Services may give consideration to the
164 history of a facility's compliance in addition to other criteria used to
165 select a facility for an audit.

166 (d) A finding of overpayment or underpayment to such facility shall
167 not be based on [extrapolated projections] extrapolation unless (1)
168 there is a determination of sustained or high level of payment error
169 involving the facility, (2) documented educational intervention has
170 failed to correct the level of payment error, or (3) the value of the
171 claims in aggregate exceeds [one hundred fifty] two hundred thousand
172 dollars on an annual basis.

173 (e) A facility, in complying with the requirements of any such audit,
174 shall be allowed not less than thirty days to provide documentation in

175 connection with any discrepancy discovered and brought to the
176 attention of such facility in the course of any such audit.

177 (f) The commissioner shall produce a preliminary written report
178 concerning any audit conducted pursuant to this section and such
179 preliminary report shall be provided to the facility that was the subject
180 of the audit not later than sixty days after the conclusion of such audit.

181 (g) The commissioner shall, following the issuance of the
182 preliminary report pursuant to subsection (f) of this section, hold an
183 exit conference with any facility that was the subject of any audit
184 pursuant to this subsection for the purpose of discussing the
185 preliminary report. Such facility may present evidence at such exit
186 conference refuting findings in the preliminary report.

187 (h) The commissioner shall produce a final written report
188 concerning any audit conducted pursuant to this subsection. Such final
189 written report shall be provided to the facility that was the subject of
190 the audit not later than sixty days after the date of the exit conference
191 conducted pursuant to subsection (g) of this section, unless the
192 commissioner and the facility agree to a later date or there are other
193 referrals or investigations pending concerning the facility.

194 (i) Any facility aggrieved by a final report issued pursuant to
195 subsection (h) of this section may request a rehearing. A rehearing
196 shall be held by the commissioner or the commissioner's designee,
197 provided a detailed written description of all items of aggrievement in
198 the final report is filed by the facility not later than ninety days
199 following the date of written notice of the commissioner's decision.
200 The rehearing shall be held not later than thirty days following the
201 date of filing of the detailed written description of each specific item of
202 aggrievement. The commissioner shall issue a final decision not later
203 than sixty days following the close of evidence or the date on which
204 final briefs are filed, whichever occurs later. Any items not resolved at
205 such rehearing to the satisfaction of the facility or the commissioner
206 shall be submitted to binding arbitration by an arbitration board

207 consisting of one member appointed by the facility, one member
208 appointed by the commissioner and one member appointed by the
209 Chief Court Administrator from among the retired judges of the
210 Superior Court, which retired judge shall be compensated for his
211 services on such board in the same manner as a state referee is
212 compensated for his services under section 52-434. The proceedings of
213 the arbitration board and any decisions rendered by such board shall
214 be conducted in accordance with the provisions of the Social Security
215 Act, 42 USC 1396, as amended from time to time, and chapter 54.

216 (j) The submission of any false or misleading fiscal information or
217 data to the commissioner shall be grounds for suspension of payments
218 by the state under sections 17b-239 to 17b-246, inclusive, and sections
219 17b-340 and 17b-343, in accordance with regulations adopted by the
220 commissioner. In addition, any person, including any corporation,
221 who knowingly makes or causes to be made any false or misleading
222 statement or who knowingly submits false or misleading fiscal
223 information or data on the forms approved by the commissioner shall
224 be guilty of a class D felony.

225 (k) The commissioner, or any agent authorized by the commissioner
226 to conduct any inquiry, investigation or hearing under the provisions
227 of this section, shall have power to administer oaths and take
228 testimony under oath relative to the matter of inquiry or investigation.
229 At any hearing ordered by the commissioner, the commissioner or
230 such agent having authority by law to issue such process may
231 subpoena witnesses and require the production of records, papers and
232 documents pertinent to such inquiry. If any person disobeys such
233 process or, having appeared in obedience thereto, refuses to answer
234 any pertinent question put to the person by the commissioner or the
235 commissioner's authorized agent or to produce any records and papers
236 pursuant thereto, the commissioner or the commissioner's agent may
237 apply to the superior court for the judicial district of Hartford or for
238 the judicial district wherein the person resides or wherein the business
239 has been conducted, or to any judge of such court if the same is not in

240 session, setting forth such disobedience to process or refusal to answer,
241 and such court or judge shall cite such person to appear before such
242 court or judge to answer such question or to produce such records and
243 papers.

244 (l) The commissioner shall adopt regulations, in accordance with the
245 provisions of chapter 54, to carry out the provisions of this section and
246 to ensure the fairness of the audit process, including, but not limited
247 to, the sampling methodologies associated with the process. The
248 commissioner shall provide free training to facilities on the preparation
249 of cost reports to avoid clerical errors and shall post information on the
250 department's Internet web site concerning the auditing process and
251 methods to avoid clerical errors. Not later than April 1, 2015, the
252 commissioner shall establish audit protocols to assist facilities subject
253 to audit pursuant to this section in developing programs to improve
254 compliance with Medicaid requirements under state and federal laws
255 and regulations, provided audit protocols may not be relied upon to
256 create a substantive or procedural right or benefit enforceable at law or
257 in equity by any person, including a corporation. The commissioner
258 shall establish and publish on the department's Internet web site audit
259 protocols for: (1) Licensed chronic and convalescent nursing homes, (2)
260 chronic disease hospitals associated with chronic and convalescent
261 nursing homes, (3) rest homes with nursing supervision, (4) licensed
262 residential care homes, as defined in section 19a-490, and (5)
263 residential facilities for persons with intellectual disabilities that are
264 licensed pursuant to section 17a-227 and certified to participate in the
265 Medicaid program as intermediate care facilities for individuals with
266 intellectual disabilities. The commissioner shall ensure that the
267 Department of Social Services, or any entity with which the
268 commissioner contracts to conduct an audit pursuant to this section,
269 has on staff or consults with, as needed, licensed health professionals
270 with experience in treatment, billing and coding procedures used by
271 the facilities being audited pursuant to this section.

272 Sec. 3. (NEW) (*Effective July 1, 2014*) Not later than February 15,

273 2015, the Commissioner of Social Services shall submit a report in
274 accordance with the provisions of section 11-4a of the general statutes,
275 to the joint standing committee of the General Assembly having
276 cognizance of matters relating to human services on the audit
277 protocols and procedures established pursuant to section 17b-99 of the
278 general statutes, as amended by this act, and progress concerning the
279 audit protocols and procedures to be established pursuant to section
280 17b-99a of the general statutes, as amended by this act. Not later than
281 February 15, 2016, the commissioner shall submit a report in
282 accordance with the provisions of section 11-4a of the general statutes
283 to the joint standing committee of the General Assembly having
284 cognizance of matters relating to human services on the
285 implementation of the audit protocols and procedures established
286 pursuant to sections 17b-99 of the general statutes and 17b-99a of the
287 general statutes, as amended by this act."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	17b-99(d)
Sec. 2	<i>July 1, 2014</i>	17b-99a
Sec. 3	<i>July 1, 2014</i>	New section